

(2003) 11 PAT CK 0086

Patna High Court

Case No: C.W.J.C. Nos. 9839 to 9848, 11260 to 11265, 11640, 12017 to 12019 and 12395 to 12398 of 2003 and L.P.A. Nos. 987, 991, 994, 995, 999, 1005, 1020 to 1023, 1028, 1033, 1034, 1036, 1037, 1050 to 1058, 1063, 1065, 1066, 1069, 1071 to 1076, 1079, 1081 to 1086,

Suo Motu action
relating to Class of
persons who have not
Received their Salaries
and Others etc. etc.

APPELLANT

Vs

State of Bihar and
Others etc. etc.

RESPONDENT

Date of Decision: Nov. 13, 2003

Citation: (2003) 11 PAT CK 0086

Judgement

@JUDGMENTTAG-ORDER

Ravi S. Dhavan, C.J.

The Patna High Court is being flooded by a tidal wave of common pleas. Actually, two types of litigation are weighing heavily on the High Court. The gunny bags are full of such cases, but there is no judge manpower to take care of them.

2. The first type of case is the onslaught of bail applications. The number of bail applications that are filed at the Patna High Court and the judge manpower needed to tackle this pressure is a quantum not witnessed in any other High Court in the nation. In assessing this situation, the Court is concerned only with the simple matter of the mechanics of how to deal with the cases, which are filed. The colossal filing of bail applications does reflect on the existence of, or the absence of, peace and harmony and law and order. Are there ways to bring peace and order? The answer is yes, but this "yes" will be dependent upon the joining of a lot of people in the effort, and this will need spirit of inquiry and reform.

3. The other load of litigation at the High Court is in Civil Action. Most particularly, there is flood of cases of people living in poverty, despite technically having a job--the employed who are Jobless, the employed who are salary-less, the retired who are pension-less. This is not the matter of a handful of cases. Several benches of the Court are caught up in dealing with this phenomenon of the government employee in penury, or the retired government servant without a pension. Cases do not come from one department of the government. Name any department in the government and there will be cases pending in the High Court. If there is employment, why is salary not paid? If there is retirement, why is provident fund not paid? These are issues. The answer often given is that it is a "bad" employment. When the State makes such a defence in one case it could be an exception, but if there is a flood of cases and a horde of explanations then something has gone wrong somewhere, wrong within the administration. Whichever side the wrong may have happened--a wrong employment given or taken--the case has not preceded the issues on wrongs. The issues were born within the government as stage one of the cancer-like disease. Stage two was when no one looked at these wrongs within the government. Stage three was the escapism within the administration of not sorting out the problem. The wronged man came to the High Court, and the issues were opened again, both stage one and stage two. And the cases came, and still come, like a tidal wave. This tidal wave will pull into wake both the man who brought the cause and the State which has to defend it, and wash the problem ashore without a solution. And, wave after wave of cases of Government employees, particularly the lowest rung, Category IV, lash the shore of the High Court. It is not a drop by drop solution that can be given. These cases are a phenomenon. The problem within the administration is also a phenomenon.

4. Whether on the Criminal side or the Civil side, with such phenomena lashing at the High court, functioning without its full complement of judges, the Court has become a Court of common pleas.

5. There is always a solution to any problem, but there is also a spirit with which it must be found. There must be an inclination to work upon an answer. But, and this is a fundamental "but", the solution will not come in the heat of battle, or through belligerence and attack. It may be remembered by the State administration, that if there were no judges, it would still be left with the problem of resolving issues. Judges will come and Judges will go, bureaucrats will move on, Ministries will form and change, but the problem will remain until somebody solves it.

6. To automatically or mindlessly file cases to confront the underdog, the man in penury without the pension or salary to which he thought he was entitled, is a, strategy of avoidance--to avoid finding a solution. Taken together, the Court sees this as an unhealthy phenomenon, though a bureaucratic mind may see it as a battle won.

7. The credibility of the Government is at stake; the Court only has to tackle the cases one by one or all together. Which will it be, so that it brings a solution? A problem of a pension not paid in Gaya and an issue of a wrongful dismissal in Motihari, and such are

the cases and causes pending from all districts in the High Court, are only symptoms of the disease which afflicts every district of Bihar from which cases are pending in the High Court in thousands.

8. Why do these cases come to the High court? Is there no forum in which all this can be examined? The forum was there. The Legislature had provided it. It was by an Act of the Legislature. The forum was the Bihar Administrative Services Tribunal, constituted under the Bihar Administrative Services Tribunal Act, 1981. This was a complete enactment, it provided a forum for all issues, whether pensions not paid or wrongful dismissals, to be resolved by the special tribunal. What happened to this Tribunal? It is not for the High Court to identify the causes why an institution at work was brought to a grinding halt. The State Government has to seek an answer within itself. All this pressure of cases which should have been before the Tribunal, has been diverted to the High Court. The High Court has not asked for this pressure of work, but it needs to be realized that High Court cannot ask a man who has not received his Provident Fund for ten years not to come to the Court. The High Court cannot throw out an issue of a wrongful dismissal made after two decades in a certain department in Sitamarhi, and tell such an employees "go find the alternate forum". He will ask the High Court, "where is the forum? Will anybody listen to me? Your Honour, if you will not listen to me, where will I go? There are no takers for my problem." The High Court keeps its doors open for such persons. The High Court cannot take the problems of such people on its conscience. The only promise the High Court can give to such underdogs is that even if no one else will, the Court will hear their story.

9. The State Government will have to find the time to ponder over this phenomenon, and consider that the very forum which it had provided to listen to the complaints and grievances of its own employees--the door of this forum has been shut by the Government itself. The Tribunal lies with vacant chairs, and vacant rooms.

10. The pressure on the High Court to deal with all these cases is thus sufficiently clear. Again a fundamental question has to be asked: where was the origin of the dispute? At the High Court? No, the High Court only received the problem, the dispute saw its birth within the portals of the State administration itself. But why so many disputes?

11. There would be no need for these issues to come to the High Court if each dispute had been resolved in a decentralized way, within the administration itself, whenever and wherever they arose. If resolved at the local level, it will be a matter between the worker and the manager, the employee and the senior bureaucrat. There is no reason why between them the issues cannot be resolved. If something has gone wrong somewhere, then there is no reason why the administrators, without fear or favour, should avoid recording the aberration which happened. In a Parliamentary democracy, if it is a solitary dispute then there is sufficient hierarchy at every level, to resolve the issues, whether this is done by an Under Secretary, Joint Secretary, Secretary or Minister. But if the dispute has taken the turn of annihilation of issues as a class, sending them to the gas chamber, so to speak, and doing a mass burials by dumping the bodies and bulldozing

them under, then the cry of the man who has gone to his grave without salary or pension will haunt the government for all times to come. The State counsel telling the Court that these are the aberrations of a particular Minister or a particular Civil Servant is a bad defence. The Court is not going to wash the dirty linen of a soiled administration. Such issues will have to be taken as a whole. Then the givers, the doers and the takers will all have to be put in the same basket. The High Court cannot find the Minister who did it, and who is not available. It is not the obligation of the High Court to find the particular Civil Servant who was in partnership with a particular Minister and the two merrily made a business out of giving, as the government submits before the Court, to put it mildly "wrong appointments". The solution in this is very simple, it is entirely in the hands of the government, provided it has the will to do it. It should not fire the gun on the shoulders of the High Court. Clearly the government can make an unbiased vigilance enquiry and line up everybody, regardless of rank or position.

12. There is also another side of the story, in what has happened to such matters in Public Sector undertakings in Bihar. And yet another side of similar stories in the co-operative sector of the State. The last aspect is not the subject matter of this present order. But in any of these, the theme is the same--appointments, terminations, absorptions, no pension, no provident fund, no gratuity, no arrears of pay. There is another serious aspect which is now surfacing; staff of government companies, other staff in the organizations mentioned above not excluded, are dying in poverty. The cause: salary not paid, arrears of salary not paid, pensions not paid, provident fund and gratuity not paid. Even pensioners have died waiting for their pensions : widows have died without widows' pension. All these aspects confront the State administration as a lull before a storm. The storm is not bursting because a large number of cases are pending at the Patna High Court and such people are living in an illusion or a hope, that the High Court will be able to deliver their service benefits which otherwise are their right. Day in and day out orders are being passed in different divisions of Courts where the opposite parties whether Government Departments, public sector undertakings or co-operative societies, ultimately acknowledge that payments were due. If that was so, why was it not paid in time? No answer is being given to the Court, but a payment is brought at the Bar of the Court by a cheque or an acknowledgement in an affidavit that it has been paid.

13. Why was it withheld in the first place? Why must there be contempt proceedings to duplicate the same cause again? Why should the Court's time be wasted, an employee be harassed, and yet harassed more and more, that even after an order of a Court, payment is not made unless he files a contempt application? Is the belligerence of a Contempt action a solution to deliver service benefits to an unpaid employee? Is this hostility to employees and their claims a style of the administration? Payment will be only made on service benefits, pensions and provident funds, only when the High Court will order it? Is this the state of affairs? Unknown, even to the High Court and the Supreme Court and those who are concerned with the phenomenon of unpaid employees, is an information which has been given by the Lokpal of Bihar, that by and large all the cases

which he is receiving, are about unpaid benefits and retirement dues. Putting all the stories together makes for very tragic reading for the Court which day in, day out, deals with this pathetic problem. For a soulless government, a soulless administration there is no sensitivity to deal with these problems in a spirit of respect for the employee and regard for his labour and services. Between the babu and the officers, of services benefits not paid, pensions and provident funds not delivered, it is a mundane exercise of wrapping up the bundle in the proverbial red tape, to let it gather" dust. One case, or two cases, the result of a fraudulent appointment obtained may be an exception. For others, lawyers argue on behalf of these hapless employees that there are only two ways that the retirement dues of their clients will be delivered; one is if a service charge is paid and the other is an order of the Court, and their client chose to file a case at the Patna High Court. This means having to pay a service charge for rightful dues may be a common practice.

14. The case of the Public" Sector undertakings, or Government companies in Bihar, is no different in theme or content as reflected upon by the Court above.

15. After the Supreme Court had expressed its concern the managers and administrators of these Government companies, the State administration not excluded, should have got their act together and got down to the solitary business, in a business-like manner, of getting their accounting correct. Running a company, any company, in the private sector or the public sector, is business. Profit and loss have to be accounted for. Expenditure and salaries paid to the managers and workers have also to be accounted for. Unfortunately, in the case of Public Sector Undertakings in Bihar, this accountability has been thrown to the winds. And it is not unknown that a defence is taken by its managers and administrators and Counsel who appear on behalf of such undertakings that they are not accountable. Is this so? This is the answer which is given to the workers, when they seek their service benefits and retirement dues. The top echelons of bureaucracy who man these operations tell the employees : "Go to the High Court get an order from there," After all, in these very proceedings State Counsel has also told the Bench, that these employees can go the Supreme Court.

16. The question remains of how a dead employee will go anywhere. If he has died without heirs, his dues are an unjust enrichment of the heartless corporation. A dead worker"s widow cannot chase her husband"s dues when the worker did not receive even his salary and retirement dues are a distant illusion. There are employees before the Court who have been stricken with cancer and other serious ailments, there are sons to be educated and daughters to be married and the employee says Tie does not have any money to carry out these family obligations. There are widows with children who are waiting for their husbands" dues to be paid; the education of these children whose father died waiting for his dues is yet another illusion. The Court has before it a phenomenon of poverty, and the State counsel submits that it is not the business of the High Court to engage its attention with these problems and these persons in destitution can go to the Supreme Court. The Court has reflected on a dead man who can go nowhere. Litigation

may be luxury for some, the State administration of Bihar or the managers of public sector undertakings, for they have the resources to create litigation and pay for it. How will these employees defend themselves when all that they have is a bleak future and no income?

17. As the State resists these causes, the most tragic circumstance is that it is not denied that dues have to be paid. Purchasing time is the method which, has been engineered by the State administration and the managers of these companies as if to drag on the litigation until these defenseless workers die, falling like ninepins, one by one. Yes, this is a solution, but a very sadistic one. It is not one of a benevolent employer not in keeping with the theme of the Constitution on whatever welfare may be about at least for a State employee or in a "socialist, democratic republic" where public sector undertakings were created as a socialist programme. The protection of the Constitution of India is on these employees.

18. While the Government of India is seriously considering bringing in Social Security in keeping with a welfare State, the Government of Bihar resists paying the service dues of its own employees. Is this administrative justice? And government counsel takes preliminary pleas to have these cases thrown out. The Chief Secretary, standing next to counsel says he will look into this matter, meanwhile. What exactly is going on? Will someone educate the court, please.

19. The Registrar General of the High Court informs the Bench every day of the number of applications, or received from such persons informing the High Court of the dues that are due to them, and on behalf of the State it is contended that the applications be thrown out? The Registrar General of the High Court informs the Court that these applications come by post and some of such affected employees bring them in person. He describes the state of these persons as pathetic and disturbing as they come with tragic stories of what poverty has done to them, and they only get a momentary satisfaction of meeting the Registrar General. Why are riot all these persons paraded before the State Counsel so that he can see their tragedies for himself, and look into them if he has an inclination to do so. Bumping these applications out of court is no solution, though it may be a victory for the State Counsel and the administration.

20. Again, the only concern of the Supreme Court was, and is, that this problem be solved. For those who have to receive payments they should receive it even if the State is to discharge the liability, the accounting between the State of Bihar and the companies may be done later. The order of the Supreme Court should be accepted in these very simple terms. These are all Class III and IV category employees. If the State Counsel is so interested in taking preliminary objections in asking the Court to throw out the applications and submitting that these people can go to the Supreme Court, then he may as well take a busload of these people wherever he desires them to go. But, why will not the Government, someone within the Government, the erstwhile managers or the present captains of the Public Sector undertakings in the State, put their heads together and solve

the problem?

21. Has anybody within the Government realized that unless any other pattern exists, as none has been shown to the Court, as there is a game to hide the records, that the shares of the Government companies are held by the Head of the State? The shares of a Government of India undertaking, are held by the President of India. The Shares of a State Government Company are held by the Governor of the State. This is the stipulation of the law, unless any other pattern has been provided in the structure of the company and its share holdings. Such companies are structured u/s 617 of the Companies Act, 1956. In simple terms this is the incorporation of a government company. But the Governor of the State, or for that matter the President of India, while they hold the shares enjoy sovereign immunity in the answerability for the affairs of the Company. The Governor of the State cannot be summoned at the Bar of the High Court and yet it would not be appropriately correct to send a notice to the Governor, the share holder, to give any explanation on the affairs of the company.

Then, on whom does the answerability lie? It lies on those who are invested with the responsibility and obligation to run a State undertaking. The answerability to the law is the same whether in the private sector or the public sector. After the company's incorporation, minute books have to be kept. Accounts have to be maintained. On the maintenance of the accounts are made the balance sheets. The accounts and the balance sheets are reflected upon at the accounts meeting, and passed upon at the annual general meeting. The accounts which are considered at these meetings are audited accounts. Returns have to be filed. All this has been provided in the Companies Act. Not to file returns is a crime. A corporate crime. Directors can be fined and imprisoned. Likewise, like any ordinary citizen, a government company, no different from the private sector, has to file income tax returns under the Income Tax Act, 1961. Not to file Income Tax returns is also a crime and invites penalties as provided. All this record is a public record. The record filed before a Registrar of Companies is public record. On a payment of a nominal fee, any shareholder can get a copy. Unfortunately within the public sector undertakings of Bihar, violation of the Companies Act has taken place with impunity-Returns have not been filed for more than a decade, if not two decades. After a set of proceedings at the Patna High Court. when returns were filed and summons were issued to the bureaucrat directors, some ran to have the proceedings quashed and others asked the corporate entities to seek compounding of offences. This is an acknowledgement of hiding the record or of " not accounting for the profits and losses and expenditures. The Law provides that audited accounts of such public sector and government companies will be laid before the Parliament or the State Legislature as the case may be, before both the houses.

This is provided in Section 619A of the Companies Act. The elected representatives of the people are entitled to see the functioning and internal affairs of government companies. When this record was sought, impertinence was expressed to the High Court, that there is no obligation to produce these records, and State Counsel instead of

advising the erring bureaucrats on the stipulation of the Law (sic) to be bating the Courts, as if to abet the withholding of public information which normally even one member of the Legislative Assembly can demand. Both the Houses of the Legislature are entitled to see these reports and the information cannot be withheld from the Legislature. Unfortunately, in Bihar the accountability of such companies just does not exist. Returns on running the companies have not been filed for decades. In some companies, even after incorporation, no accounts were audited and nothing was filed before the Registrar of Companies, what to say of presenting records before the Legislature or the Court when sought.

22. Why are these records so "sensitive" for the State administration, the managers of these companies and every government which has come to power? The records of government companies do not partake the nature of a defence secret which may jeopardize the security of the nation, in which case the government may claim privilege and have it tested before the High Court.

23. On behalf of the amicus curiae or the few who have appeared at the Bar in pressing their retirement dues or pensions it is contended that at time Ministers, bureaucrats and other favoured managers were put on the Board of Directors, they enjoyed the luxuries of the company, incurred expenditures on expense accounts in their travels, even abroad, jet-setting all over the nation, living in luxury and attaching a staff around them which would even embarrass a feudal zaminadar. Many of such persons are holding high positions whether in the State administration or before the Central Government in so far as bureaucrats are concerned. Insofar as Ministers are concerned it depends who was the party in power at the relevant time. If the statutory information were before the Registrar of Companies, all this would be out in the open. The information is being hidden because it will reflect so badly on the manner in which government companies were run in this State.

24. It is also contended that favoured employees of these government companies were surreptitiously, as a favoured treatment, given pay, and are still receiving pay, while others who were not close to, power were left destitute. It is also contended that in another surreptitious game, employees recruited within these government companies were absorbed into government service so that they escape the tragedy of not receiving salary or pension. The details can only come, if the returns had been filed or the accounts audited. Muster of staff employed or varied or expenditure on payment of salaries shown on record and returns. Or the audited accounts laid before the houses of Legislature, in which case any member of the public could see the functioning of these companies.

25. And while these case are being dragged, it is contended that there have been changes in the Company Law. Drastic changes have been brought about by the amendments made in 2002. When this was drawn to the attention of the Chief Secretary present, in fairness the Court will say he submitted that he was not aware of them. He acknowledged in Court that on the pressure of the Court, the committee which was to-be constituted by the High Court, of which a request was "made to make it functional

immediately after the order of the Supreme Court, was notified only last Saturday (8 Nov. 2003). In between senior bureaucrats particularly within the bureau of Public Enterprise were contradicting not only the Chief Secretary but the Chief Minister on the structure and the functions of this committee. This controversy is in the media.

26. While this fight was going on to delay the functioning of the committee set up on concern by the Supreme Court for the ultimate purpose to deliver payment to these poor employees, the process was being bogged down. It is not the purpose of the Court to bring all this on record, press reports are otherwise available.

27. What is most disturbing is that more than 1,400 people have died in poverty as a result of not having receiving their dues, whether arrears of salary or retirement dues. The newspapers report the figure as 1,428 and even names have been given of persons who have died, as a sample, and the names of government companies have also been published. Who will take the responsibility for these deaths? The media reports them as starvation deaths. The Governor of the State, notwithstanding that he holds the shares, is not responsible on the age old theory that "the king shall do no wrong". But the corollary to this is that while the Head of the State will enjoy immunity, he will ensure (sic) wrong will be done, and that those who do it will be answerable to the law like any ordinary man. This cat and mouse game, drawing into a fight a dead worker and his heirs, and those living in poverty is a shameful conduct of whoever had run or is running these government undertakings. Letters threatening self-immolation are received in Court, not in the offices of these government companies. Some of these do not even have Boards of Directors. The Court asked the Chief Secretary, where should these letters be sent, to him, the Chief Minister, the Governor, or as the State counsel says, the Supreme Court? Whether it is an application or an made by heirs of a dead worker or by a living one seeking service dues, or a threat of suicide in desperation is one composite record. The culpability lies somewhere within the administration and those who ran the company. Someone is answerable, perhaps for this reason and the luxury of expenditures, how the money disappeared, the records are being hidden. The Chief Secretary says he will look into these matters. Then why raise preliminary objections to throw out these applications or Why are legal submissions being made that all these may go to the Supreme Court? The answer of the High Court to counsel who make such submissions is that dead men neither walk nor talk, nor come to the High Court or go to the Supreme Court.

28. Enough is enough. The Chief Secretary assures the Court that he will ensure that every information required by law and such information in the affairs of these government companies or corporations, will be unearthed and placed before the Court. The Court appreciates the gesture of the Chief Secretary but is unable to accept the contradiction with the submissions of State Counsel.

29. This disease within the government companies and corporations has been going on for years. There are several companies. Some are noticed in the Supreme Court order. There are others, the default list of which lies with the Registrar of Companies.

30. The chart in the Supreme Court order [Kapila Hingorani Vs. State of Bihar](#), refers to about 22,000 (Twenty two thousand) employees waiting to receive their service dues. This is not only a scandalous state of financial affairs, but with more that 1368 (the figure as noticed in the Supreme Court order) people dying without redress, how can the government and those who run these companies sleep at night? These dead employees must have left widows and children. If a man has died in poverty, and 1,428 (as the media reports after the Supreme Court order) for the reason, this is corporate homicide of a new kind.

31. The law requires a statutory audit to be placed before the Legislature in respect to such government companies and corporations.

32. This is a matter of a financial scandal which involves people in power misusing politics. As an ad interim measure, two steps have to be taken without loss of time.

A) It is a request of this Court to the Comptroller and Auditor General of India, that as a prelude to ensuring the accounts and books of such companies and corporations since the time the defaults were made, a special team be sent to audit the books and accounts of such companies. Only then could they be laid before the houses of legislature as the law requires.

B) That the Central Bureau of Investigation cause an enquiry and investigation to be made as to who were those who sat in these companies as administrators and managers and were responsible for not submitting statutory information as is required under the Companies Act, 1959 so that they are answerable to the law for corporate crimes and of deaths which have occurred in poverty because of service dues not received.

33. In so far as the proceedings before the Justice Uday Sinha Committee is concerned, the court accepts the assurance of the Chief Secretary that every information which is required will be placed before the Committee so that it carries on its functions with the help of the State administration in identifying who is to receive payment as an interim measure.

34. No information worth the name even a paper has been given by the State so that the court could carry out and declare an interim relief as in mentioned by the Supreme Court in Sub-clauses (iii) & (v) of paragraph 75 of the order. Even while this order was being written the court asked the State counsel that if a list of the employees could be given, the court would have declared and recommend an ad interim relief. No list was made available. Between the time when the last deposit was made with the Registrar and the Committee was accepted for sanction and budgeted and notified on 10 November 2003 the administrators and the managers of the Government Companies concerned or the State administration in-charge of the Government Companies had sufficient time, during this period, to make out a list of employees to whom arrears were due, whether arrears of pay, provident fund or pension. It appears that all this information gathering on such

employees was deliberately left out as if the exercise would only begin as an when the Committee is notified.

35. The only thing that the High Court can now do is to speed up the mater as from now. But even this it will not be able to do if the information is not supplied. After all, the verification of the payment to an employee entitled to receive it will have to done between the Managers of the companies, the Bureau of Public Enterprises and the State administration.

36. For this reason, copies of applications/of these employees whether received on a post card or paper, whichever, be sent to the Chief Secretary, who may require the administration to check with the workers and employees of State government companies/corporations to verify whether repayment is due to an employee. Thereafter, send the list of the employees company/corporation wise to the committee. But this information should be filed before the committee within ten days from today. Thereafter, depending with what speed the committee examines and recommends the interim payment, the court will receive the recommendation to order disbursement as recommended.

37. Awaiting the report of the committee for further proceedings.